

Office of the Independent Police Auditor

Monthly Report

January 2012



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

February 13, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period January 1, 2012 through January 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at www.bart.gov/policeauditor.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA ⁴	Number of Cases Appealed by CRB ⁵
June 27, 2011 - October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	6

Citizen Complaints Received per Department

OIPA	1
BART Police Department	4
TOTAL	5

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed⁶**

During the month of January 2012, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Neglect of Duty	BART Police Department was notified and an investigation was initiated.	42

During the month of January 2012, 4 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Force; Procedure	An investigation was initiated.	29
2	Courtesy; Conduct Unbecoming of an Officer	An investigation was initiated.	35
3	Conduct Unbecoming of an Officer	An investigation was initiated.	40
4	Bias Based Policing; Conduct Unbecoming of an Officer; Courtesy	An investigation was initiated.	102 ⁷

During the month of January 2012, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	21

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of January 2012, 2 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition ⁸	# of Days Elapsed Since Complaint Filed
1 (IA2011-034)	<u>Police Officer #1:</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer• Procedure	<u>Police Officer #1:</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer – Sustained• Procedure – Exonerated	257
2 (IA2011-031)	<u>Police Officer #1</u> <ul style="list-style-type: none">• Truthfulness• Procedure• Force	<u>Police Officer #1</u> <ul style="list-style-type: none">• Truthfulness - Sustained• Procedure - Sustained• Force – Not-Sustained	258

During the month of January 2012, 2 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA2011-079)	Bias Based Policing	Supervisory Referral ⁹	76
2 (IA2011-066)	Neglect of Duty	Supervisory Referral	105

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁵ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁶ In all cases where it appears in this report, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁷ This case was first received in November 2011; it was not entered into the IAPRO database at that time, however, as the Office of Internal Affairs sought to obtain more information with regard to the details of the case. The case has since been entered into the database and, as such, is accounted for in this monthly report.

⁸ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

⁹ In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.